

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 09-48 (JNE) (1)
Civil No. 17-3386 (JNE)

KALIN THANH DAO,

ORDER

Defendant.

This matter is before the Court on Defendant Kalin Thanh Dao's second motion under 28 U.S.C. § 2255. (*See* Dkt. No. 194.) The Court previously denied Dao's first § 2255 motion, in part because it complained about the conditions of her confinement. (*See* Dkt. No. 142.) She now complains that the Government's policy of housing transgender, biologically male inmates with biologically female inmates violates the Ex Post Facto Clause, Contract Clause, and Eighth Amendment of the U.S. Constitution. (*See* Dkt. No. 194.)

Setting aside the issue of whether Dao's motion is barred by § 2255(h)'s prohibition on filing successive motions, *see Deroo v. United States*, 709 F.3d 1242, 1244 (8th Cir. 2013), Dao's motion is not cognizable because she challenges the legality of the conditions and execution of her sentence, *see Nichols v. Symmes*, 553 F.3d 647, 649 (8th Cir. 2009); *Bell v. United States*, 48 F.3d 1042, 1043 (8th Cir. 1995); *United States v. Hutchings*, 835 F.2d 185, 186 (8th Cir. 1987); *Voytik v. United States*, 778 F.2d 1306, 1310 (8th Cir. 1985). Because reasonable jurists could not conclude that the denial of Dao's motion is debatable or incorrect, the Court denies a certificate of appealability. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The record conclusively shows that Dao is not entitled to relief, so an evidentiary hearing is unnecessary. *See* § 2255(b); *Thomas v. United States*, 737 F.3d 1202, 1206 (8th Cir. 2013).

Therefore, IT IS ORDERED THAT:

1. Defendant Kalin Thanh Dao's Motion for Habeas Corpus Relief Pursuant to 28 U.S.C. § 2255 [Dkt. No. 194] is DENIED.
2. A certificate of appealability is DENIED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 2, 2017

s/Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge